

Senate Study Bill 1064

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
PUBLIC SAFETY BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the criminal offenses of enticing a minor, and
2 the possession, distribution, and reporting of obscene
3 material, and providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1332DP 83
6 jm/rj/24

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1 1 DIVISION I
1 2 ENTICING A MINOR
1 3 Section 1. Section 692A.1, subsection 5, paragraph n, Code
1 4 2009, is amended to read as follows:
1 5 n. Enticing ~~away~~ a minor in violation of section 710.10,
1 6 subsection 1.
1 7 Sec. 2. Section 710.10, Code 2009, is amended to read as
1 8 follows:
1 9 710.10 ENTICING ~~AWAY~~ A MINOR.
1 10 1. A person commits a class "C" felony when, without
1 11 authority and with the intent to commit sexual abuse or sexual
1 12 exploitation upon a minor under the age of ~~thirteen~~ sixteen,
1 13 the person entices ~~away or attempts to entice~~ the minor under
1 14 the age of ~~thirteen~~ sixteen for the purpose of committing
1 15 sexual abuse or sexual exploitation, or entices ~~away or~~
1 16 ~~attempts to entice~~ a person reasonably believed to be under
1 17 the age of ~~thirteen~~ sixteen for the purpose of committing
1 18 sexual abuse or sexual exploitation.
1 19 2. A person commits a class "D" felony when, without
1 20 authority and with the intent to commit ~~an illegal act upon a~~
1 21 ~~minor under the age of sixteen, the person entices away a~~
1 22 ~~minor under the age of sixteen, or entices away a person~~
1 23 ~~reasonably believed to be under the age of sixteen sexual~~
1 24 ~~exploitation, the person entices or attempts to entice a minor~~
1 25 ~~who is sixteen or seventeen years of age for the purpose of~~
1 26 ~~committing sexual exploitation or entices or attempts to~~
1 27 ~~entice a person reasonably believed to be a minor who is~~
1 28 ~~sixteen or seventeen years of age for the purpose of~~
1 29 ~~committing sexual exploitation.~~
1 30 3. A person commits a class "D" felony when, without
1 31 authority and with the intent to commit ~~an illegal act upon a~~
1 32 ~~minor under the age of sixteen, the person entices or attempts~~
1 33 ~~to entice a minor under the age of sixteen for the purpose of~~
1 34 ~~committing an illegal act, or entices or attempts to entice a~~
1 35 ~~person reasonably believed to be under the age of sixteen for~~
2 1 ~~the purpose of committing the illegal act.~~
2 2 3- 4. A person commits an aggravated misdemeanor when,
2 3 without authority and with the intent to commit an illegal act
2 4 upon a minor ~~under the age of sixteen, the person attempts to~~
2 5 ~~entice away a minor under the age of sixteen, or attempts to~~
2 6 ~~entice away a person reasonably believed to be under the age~~
2 7 ~~of sixteen who is sixteen or seventeen years of age, the~~
2 8 ~~person entices or attempts to entice a minor who is sixteen or~~
2 9 ~~seventeen years of age for the purpose of committing an~~
2 10 ~~illegal act, or entices or attempts to entice a person~~
2 11 ~~reasonably believed to be a minor who is sixteen or seventeen~~
2 12 ~~years of age for the purpose of committing an illegal act.~~
2 13 4- 5. A person's intent to commit ~~a violation of this~~
2 14 ~~section sexual abuse, sexual exploitation, or an illegal act~~
2 15 ~~upon a minor may be inferred when the person is not known to~~
2 16 ~~the person being enticed away minor whom the person is~~
2 17 ~~enticing or attempting to entice and the person does not have~~
2 18 the permission of the parent, guardian, or custodian to

2 19 contact the person being enticed away minor whom the person is
2 20 enticing or attempting to entice.

2 21 ~~5- 6.~~ For purposes of determining jurisdiction under
2 22 section 803.1, an offense is considered committed in this
2 23 state if the communication to entice ~~away or to attempt to~~
2 24 entice a minor or a person believed to be a minor who is
2 25 present in this state originates from another state, or the
2 26 communication to entice ~~away or to attempt to entice~~ a minor
2 27 or a person believed to be a minor is sent from this state.

2 28 Sec. 3. Section 901A.1, subsection 1, paragraph c, Code
2 29 2009, is amended to read as follows:

2 30 c. Enticing a minor ~~away~~ in violation of section 710.10,
2 31 subsection 1.

2 32 DIVISION II
2 33 POSSESSION, DISTRIBUTION, AND REPORTING
2 34 OF OBSCENE MATERIAL

2 35 Sec. 4. Section 728.1, subsection 3, Code 2009, is amended
3 1 to read as follows:

3 2 3. "Material" means any book, magazine, newspaper or other
3 3 printed or written material or any picture, drawing,
3 4 photograph, motion picture, or other pictorial representation
3 5 or any statue or other figure, or any recording, transcription
3 6 or mechanical, chemical or electrical reproduction, or any
3 7 live transmission, or any other articles, equipment, machines
3 8 or materials.

3 9 Sec. 5. Section 728.1, subsection 7, paragraphs e and g,
3 10 Code 2009, are amended to read as follows:

3 11 e. Sadomasochistic abuse of a minor for the purpose of
3 12 arousing or satisfying the sexual desires of a person who may
3 13 view a visual depiction of the abuse.

3 14 g. Nudity of a minor for the purpose of arousing or
3 15 satisfying the sexual desires of a person who may view a
3 16 visual depiction of the nude minor.

3 17 Sec. 6. Section 728.1, Code 2009, is amended by adding the
3 18 following new subsection:

3 19 NEW SUBSECTION. 11. "Visual depiction" means but is not
3 20 limited to any picture, drawing, cartoon, painting, slide,
3 21 photograph, digital or electronic image, book, magazine,
3 22 negative image, undeveloped film, motion picture, videotape,
3 23 digital or electronic recording, live transmission, sculpture,
3 24 or other pictorial or three-dimensional representation.

3 25 Sec. 7. Section 728.12, subsection 1, Code 2009, is
3 26 amended to read as follows:

3 27 1. It shall be unlawful to employ, use, persuade, induce,
3 28 entice, coerce, solicit, knowingly permit, or otherwise cause
3 29 or attempt to cause a minor to engage in a prohibited sexual
3 30 act or in the simulation of a prohibited sexual act. A person
3 31 must know, or have reason to know, or intend that the act or
3 32 simulated act may be photographed, filmed, or otherwise
3 33 preserved in a ~~negative, slide, book, magazine, computer,~~
3 34 ~~computer disk, or other print or visual medium, or be~~

3 35 ~~preserved in an electronic, magnetic, or optical storage~~
4 1 ~~system, or in any other type of storage system~~ visual
4 2 depiction. A person who commits a violation of this

4 3 subsection commits a class "C" felony. Notwithstanding
4 4 section 902.9, the court may assess a fine of not more than
4 5 fifty thousand dollars for each offense under this subsection
4 6 in addition to imposing any other authorized sentence.

4 7 Sec. 8. Section 728.12, subsection 3, unnumbered paragraph
4 8 1, Code 2009, is amended to read as follows:

4 9 It shall be unlawful to knowingly purchase or possess a
4 10 ~~negative, slide, book, magazine, computer, computer disk, or~~
4 11 ~~other print or visual medium, or an electronic, magnetic, or~~
4 12 ~~optical storage system, or any other type of storage system~~
4 13 ~~which depicts a visual depiction of a minor engaging in a~~
4 14 prohibited sexual act or the simulation of a prohibited sexual
4 15 act. A person who commits a violation of this subsection
4 16 commits an aggravated misdemeanor for a first offense and a
4 17 class "D" felony for a second or subsequent offense. For
4 18 purposes of this subsection, an offense is considered a second
4 19 or subsequent offense if, prior to the person's having been
4 20 convicted under this subsection, any of the following apply:

4 21 Sec. 9. Section 728.14, subsection 1, Code 2009, is
4 22 amended to read as follows:

4 23 1. A commercial film and photographic print processor who
4 24 has knowledge of or observes, within the scope of the
4 25 processor's professional capacity or employment, a ~~film,~~
4 26 ~~photograph, video tape, negative, or slide which depicts~~
4 27 visual depiction of a minor whom the processor knows or
4 28 reasonably should know to be under the age of eighteen,
4 29 engaged in a prohibited sexual act or in the simulation of a

4 30 prohibited sexual act, shall report the depiction to the
4 31 county attorney immediately or as soon as possible as required
4 32 in this section. The processor shall not report to the county
4 33 attorney visual depictions involving mere nudity of the minor,
4 34 but shall report visual depictions involving a prohibited
4 35 sexual act. This section shall not be construed to require a
5 1 processor to review all ~~films, photographs, video tapes,~~
5 2 ~~negatives, or slides~~ visual depictions delivered to the
5 3 processor within the processor's professional capacity or
5 4 employment.

5 5 For purposes of this section, "prohibited sexual act" means
5 6 any of the following:

- 5 7 a. A sex act as defined in section 702.17.
- 5 8 b. An act of bestiality involving a minor.
- 5 9 c. Fondling or touching the pubes or genitals of a minor
5 10 for the purpose of arousing or satisfying the sexual desires
5 11 of a person who may view a visual depiction of the act.
- 5 12 d. Fondling or touching the pubes or genitals of a person
5 13 by a minor for the purpose of arousing or satisfying the
5 14 sexual desires of a person who may view a visual depiction of
5 15 the act.
- 5 16 e. Sadomasochistic abuse of a minor for the purpose of
5 17 arousing or satisfying the sexual desires of a person who may
5 18 view a visual depiction of the abuse.
- 5 19 f. Sadomasochistic abuse of a person by a minor for the
5 20 purpose of arousing or satisfying the sexual desires of a
5 21 person who may view a visual depiction of the abuse.
- 5 22 g. Nudity of a minor for the purpose of arousing or
5 23 satisfying the sexual desires of a person who may view a
5 24 visual depiction of the nude minor.

5 25 EXPLANATION

5 26 Division I relates to criminal offenses of enticing a
5 27 minor.

5 28 The division renames the criminal offense of enticing away
5 29 a minor to enticing a minor, and eliminates the provisions
5 30 related to enticing "away" a minor.

5 31 Under the division, it is a class "C" felony if a person
5 32 without authority and with the intent to commit sexual abuse
5 33 or sexual exploitation upon a minor under the age of 16,
5 34 entices or attempts to entice the minor for the purpose of
5 35 committing sexual abuse or sexual exploitation. The division
6 1 also makes it a class "C" felony if the person being enticed
6 2 is believed to be a minor under the age of 16. Current law
6 3 makes it a class "C" felony to entice away a minor under the
6 4 age of 13 or reasonably believed to be under the age of 13 for
6 5 the purpose of committing sexual abuse or sexual exploitation.

6 6 The division makes it a class "D" felony if a person,
6 7 without authority, and with the intent to commit sexual abuse
6 8 or sexual exploitation upon a minor 16 or 17 years of age,
6 9 entices or attempts to entice the minor for the purpose of
6 10 committing sexual exploitation. The division also makes it a
6 11 class "D" felony if the person being enticed is believed to be
6 12 a minor 16 or 17 years of age. Current law makes it a class
6 13 "D" felony to entice away a minor under the age of 16 or
6 14 reasonably believed to be under the age of 16 for the purpose
6 15 of committing an illegal act.

6 16 The division makes it a class "D" felony if a person,
6 17 without authority and with the intent to commit an illegal act
6 18 upon a minor under the age of 16, entices or attempts to
6 19 entice the minor for the purpose of committing an illegal act.
6 20 The division also makes it a class "D" felony if the person
6 21 being enticed is believed to be a minor under the age of 16.
6 22 Current law makes it an aggravated misdemeanor to entice away
6 23 a minor under the age of 16 or reasonably believed to be under
6 24 the age of 16 for the purpose of committing an illegal act.

6 25 The division makes it an aggravated misdemeanor if a
6 26 person, without authority and with the intent to commit an
6 27 illegal act upon a minor 16 or 17 years of age, entices or
6 28 attempts to entice the minor for the purpose of committing an
6 29 illegal act. The division also makes it an aggravated
6 30 misdemeanor if the person being enticed is believed to be a
6 31 minor 16 or 17 years of age. Under current law, a person does
6 32 not commit enticing away a minor for illegal acts upon a minor
6 33 16 or 17 years of age.

6 34 Division II relates to the possession or distribution of
6 35 obscene material.

7 1 The division modifies the definition of "material" in Code
7 2 chapter 728 to include live transmissions.

7 3 Under the division, the modification of the definition of
7 4 the term "material" results in changes to the elements of the
7 5 following criminal offenses: dissemination of obscene

7 6 material to minors (Code section 728.2), admitting minors to
7 7 premises where obscene material is exhibited (Code section
7 8 728.3), rental or sale of hard-core pornography (Code section
7 9 728.4), sexual exploitation of a minor (Code section
7 10 728.12(2)), and telephone dissemination of obscene material
7 11 (Code section 728.15).

7 12 The division changes the elements of the criminal offense
7 13 of sexual exploitation of a minor to prohibit purchasing or
7 14 possessing "visual depictions" of a minor engaged in a
7 15 prohibited or simulated sex act.

7 16 The division defines the term "visual depiction" to include
7 17 any picture, drawing, cartoon, painting, slide, photograph,
7 18 digital or electronic image, book, magazine, negative image,
7 19 undeveloped film, motion picture, videotape, digital or
7 20 electronic recording, live transmission, sculpture, or other
7 21 pictorial or three-dimensional representation. The division
7 22 strikes current references to a computer or other types of
7 23 storage systems that may preserve such prohibited images.

7 24 The changes to the criminal offense of sexual exploitation
7 25 of a minor are in response to State v. Muhlenbruch, 728 N.W.2d
7 26 212 (Iowa 2009).

7 27 The division also substitutes "visual depiction" for
7 28 storage systems referenced in Code sections 728.12(1) and
7 29 728.14 to conform with the sexual exploitation of a minor
7 30 changes in Code section 728.12(3) due to the Muhlenbruch case.
7 31 In addition, the division adds the word "visual" in Code
7 32 section 728.1(7) to also conform with the changes in the
7 33 division.

7 34 A class "C" felony is punishable by confinement for no more
7 35 than 10 years and a fine of at least \$1,000 but not more than
8 1 \$10,000. A class "D" felony is punishable by confinement for
8 2 no more than five years and a fine of at least \$750 but not
8 3 more than \$7,500. An aggravated misdemeanor is punishable by
8 4 confinement for no more than two years and a fine of at least
8 5 \$625 but not more than \$6,250.

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